

MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: January 17, 2002

SUBJECT: Citizen's Action Letter Against Black Diamond Citizens for Political Responsibility

On November 28, 2001, Robert Edelman filed a citizen's action letter under RCW 42.17.400(4) with the Office of the Attorney General and the Office of the King County Prosecutor. The letter notified the Attorney General and the King County Prosecutor that if they fail to commence an action within 45 days, Mr. Edelman intends to bring, in the name of the state, a citizen's action against Black Diamond Citizens for Political Responsibility for alleged violations of RCW 42.17. The 45-day letter was forwarded to the PDC for investigation, which is the normal practice.

The PDC staff has completed its investigation of the issues raised in the citizen's action letter alleging that on or around November 1, 2001, Black Diamond Citizens for Political Responsibility violated RCW 42.17.530 by sponsoring political advertising containing false statements of material fact made with actual malice. The political advertisements were sent to Black Diamond voters opposing 2001 mayoral candidate Barry Kombol.

The PDC staff reviewed the allegations in light of the following statute:

RCW 42.17.530 prohibits a person from sponsoring with actual malice political advertising that contains a false statement of material fact about a candidate for public office. "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

Mr. Edelman alleged that in at least three political advertisements, Black Diamond Citizens for Political Responsibility included material false statements with "actual malice."

First Advertisement

Mr. Edelman alleged that the following false statements were made in one advertisement:

- "Barry Kombol wants to be mayor of Black Diamond but he lives in Enumclaw."
- "Barry Kombol claims he lives with his mother in the basement of this house in Black Diamond but this house doesn't have a basement."

Mr. Edelman states that Mr. Kombol listed home ownership in Black Diamond on his Personal Financial Affairs Statement, that the telephone entry shown in the ad was apparently copied from an obsolete telephone book, and that Qwest Dex issued the current South King County telephone book in July, 2001, well in advance of the advertisement mailing in October.

Staff's investigation found:

- that the Qwest Dex telephone book used in the ad was a 2001 book and listed Barry Kombol with a residential address in Enumclaw. The telephone book said to "Use Through July 2001."
- that the 2001 telephone book listed a business address for "Barry Kombol, atty" in Black Diamond.
- that the 2002 telephone book issued after July 2001 said to "Use Through August 2002" and in the yellow pages listed "Barry Kombol, atty" in Black Diamond.
- that the 2002 telephone book white pages did not list a residential address for Barry Kombol.
- that the statement, "Barry Kombol claims he lives with his mother in the basement of this house in Black Diamond, but this house doesn't have a basement" is not a material fact.

Second Advertisement

Mr. Edelman alleged that the following false statements were made in a second advertisement:

1. "He profits from large mining operations regulated by the city of Black Diamond."

Staff's investigation found:

- that a portion of the Palmer Coking Coal mining operation is located within the city limits of Black Diamond and is, in some respects, regulated by the City of Black Diamond.
2. "Barry Kombol has a key ownership and management position in Pacific Coast Coal Co., Franklin Energy LLC and Palmer Coking Coal Co."

Staff's investigation found:

- that Barry Kombol has a seven percent ownership interest in Pacific Coast Coal Company. His investment is valued at \$75,000 or more and he is a board member and officer (secretary/treasurer) of the company.
 - that Barry Kombol has a seven percent ownership interest in Franklin Energy, LLC and is the manager of the company.
 - that Barry Kombol has under a five percent ownership interest in Palmer Coking Coal Company. His investment is valued at \$75,000 or more but he is not on the board of directors and does not hold a management position with the company.
3. "His companies have been cited for significant pollution and containment problems."

Staff's investigation found:

- that Pacific Coast Coal Company has been cited on several occasions for pollution and containment problems. For example, In 1997, 1999, and 2001, the company received a Notice of Violation from the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement. In addition, the Washington State Department of Ecology took enforcement action against Pacific Coast Coal Company for pollution and containment problems on several occasions between 1991 and 1996.
 - that the Black Diamond Citizens for Political Responsibility relied on a Seattle P-I newspaper article stating that Palmer Coking Coal Company had been fined by the Washington State Department of Ecology for illegally dumping industrial waste. In addition, Palmer Coking Coal Company is listed as an archived Superfund site with the Environmental Protection Agency.
4. "If Barry Kombol becomes Mayor, he'll look the other way and the contamination will only get worse."

Staff's investigation found:

- that this statement is a matter of opinion and not a statement of material fact.

Third Advertisement

Mr. Edelman alleged that the following false statements were made in a third advertisement:

- Under the entry, "Current Residence" the false statement, "Lives in Enumclaw" is repeated.
- Under the entry, "Protecting Our Quality of Life" the false statement, "Opposes environmental regulations and the Growth Management Act" is made.

Staff's investigation found:

- the sponsors of the ad used a current telephone book to obtain the residential address for Barry Kombol. This allegation was previously addressed in this memo.
- that in a political ad sponsored by Barry Kombol, he stated that the City of Black Diamond has spent considerable money implementing "updates" to the "comprehensive" plan that fails to address Black Diamond's existing problems. The comprehensive plan adopted by local municipalities, including the City of Black Diamond, is part of the Growth Management Act.
- that at a Candidates' Forum before the election, Barry Kombol strongly criticized the City of Black Diamond for implementing the Growth Management Act and the basic principles outlined in the act because they were overly burdensome to the business community.
- that at the same Candidates' Forum, Barry Kombol stated that the biggest detriment to new business was the City's over-burdensome environmental regulations and comprehensive plan. Mr. Kombol also spoke of the current zoning regulations and their negative effect on the City's business growth patterns. The zoning regulations are a key component of the City's compliance with the Growth Management Act.

After a careful review of the alleged violations and relevant facts, staff found no reason to believe that the ads cited in the complaint contained a false statement of material fact made with actual malice, and seeks the concurrence of the Commission to dismiss Mr. Edelman's complaint against Black Diamond Citizens for Political Responsibility.